

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4222 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 no

AYIUBKHAN YUSUBKHAN PATHAN @ BUI

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner
MS.SIDDHI TALATI, AGP.for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 20.2.1998 passed by the District Magistrate, Anand as contained in Annexure "A" under

section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA').

The grounds of detention were simultaneously prepared but could be furnished to the detenu by Detaining Authority only after his arrest. He was actually arrested on 13.4.1998. From the grounds of detention as contained in Annexure "C" to the writ petition it appears that the Detaining Authority considered six cases registered against the petitioner under Bombay Prohibition Act. He also considered the statements of four confidential witnesses. From the aforesaid material the Detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his antisocial activities were prejudicial for maintenance of public order. After considering the efficacy of alternative remedies preventive detention was found to be the only efficacious remedy. Hence, the impugned order was passed.

The learned Advocate for the petitioner has challenged the impugned order only on one ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order.

From six registered cases under Bombay Prohibition Act against the petitioner as well as from the statements of four confidential witnesses the Detaining Authority rightly arrived at subjective satisfaction that the petitioner is a bootlegger within the meaning of section 2(b) of PASA. However, a bootlegger cannot be preventively detained unless his activities are found prejudicial for maintenance of public order.

So far as the six cases registered under the Bombay Prohibition Act are concerned, the brief account of the incident of these six cases has been given in the grounds of detention. In these grounds it is nowhere mentioned that the petitioner created any situation on these occasions which was prejudicial for maintenance of public order. Thus registration of six cases under the Bombay Prohibition Act cannot be considered to have created a situation prejudicial for maintenance of public order.

Now remains the statements of four confidential witnesses. Witness no.1 narrated about an incident which

took place near about 8th.or 9th January,1998. The petitioner at that time was selling english liquor and the witness advised him not to do so. Thereupon the petitioner abused and threatened the witness. The petitioner and his companions standing there also passed remarks against girls passing on the road. They were in effect of intoxication under liquor at that time. Beyond this, the statement does not go any further. It is not even mentioned that this incident created law and order problem, what to say of disturbance of public order. Passing of remarks on girls, according to the learned Assistant Government Pleader had created a situation prejudicial for maintenance of public order but nothing of the sort on this occasion has been stated by the witness. The learned Assistant Government Pleader relied upon the verdict of the Apex Court in Harpreet Kaur Vs. State of Maharashtra, AIR 1992 SC Pg.979. But in my view the observation of the Apex Court in this case or the observation of the Apex Court in the case of Arun Ghosh Vs. State of West Bengal, (1970) 1 SCC 98 can not be applied to the facts of the case before me. Instances were cited by the Apex Court in the case of Arun Ghosh (Supra). The first instance was of assault on girls. It was considered by the Apex Court that such incident did not cause disturbance of public order. Another incident cited by the Apex Court in Arun Ghosh's case was where a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The Apex Court proceeded to observe that a man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbances of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.

Thus, what the Apex Court emphasised in this case was that if the act of molesting girls by a man had the effect of keeping of the girls and women in the locality apprehensive of their honour and they apprehending that it would not be safe to go and pass through that locality even for attending their work, that its potentiality was considered by the Apex Court and it was considered to

have created situation prejudicial for maintenance of public order.

Witness No.1 has not stated to the effect that all the girls and women passing through a particular locality were apprehensive of the misconduct or illegal activity of the petitioner. Hence, the aforesaid verdict of the Supreme Court cannot be pressed in service for holding that the activities of the petitioner narrated by the first witness were prejudicial for maintenance of public order.

The second witness stated that about one or two months prior to 9.2.1998 when he was moving on road the petitioner exchanged the words with Rickshaw driver and lot of people collected there. The petitioner kept his motorcycle on the middle of the road. When the Rickshaw driver told the petitioner to keep the motorcycle on one side the petitioner threatened the Rickshaw driver and abused him. Persons collected there and persuaded the petitioner to go away. Witness stated, that if that was not done big quarrel might have taken place. Thus, this incident was also a preventive incident which prevented the commission of any offence. It is not stated by this witness that the petitioner extended any threat to him or had beaten him. If at all the petitioner abused only Rickshaw driver he had not complained and he did not contact the Sponsoring Authority. In this statement also there is no mention that from such incident law and order problem was created or problem disturbing public order was created. Thus, this incident is also of no consequence.

The third witness stated that the petitioner was carrying on business in english liquor near Railway Crossing. Witness observed that the petitioner was joking and quarrelling. At that time he asked the petitioner to desist from such activity. The petitioner about a month before 10.2.1998 stopped the tempo and asked the witness to carry bottles of liquor at the end of the overbridge. The witness refused to oblige the petitioner. Thereafter the petitioner raised his hand to beat the witness and ran away. Here also no offence was committed. It was only an attempt to beat the witness. Moreover there is no assertion that a situation prejudicial for maintenance of law and order or prejudicial for maintenance of public order was created by him.

The fourth witness stated about passing of remarks by the petitioner towards girls. Place is not mentioned in the grounds of detention. The learned Counsel for the petitioner has pointed out that in the original statement of the witness, the place of incident was near Railway Crossing. Thus, the statement of the witness as disclosed in the grounds of detention is silent about the place. Moreover, if his companions passed remarks against the passengers of the Rickshaw, the verdict of the Apex Court in the case of Harpreet Kaur (Supra) cannot be applied in this case for the reasons given earlier while discussing the statement of witness no.1.

Thus to my mind none of these four instances narrated by the four confidential witnesses created a situation prejudicial for maintenance of public order. As such, the order of detention cannot be sustained. The result therefore is that the writ petition succeeds and is hereby allowed. The impugned order of detention dated 20.2.1998 contained in Annexure "A" to the writ petition is hereby quashed. The petitioner shall be released forthwith from custody unless wanted in any other case.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt